

STATE OF RHODE ISLAND  
COMMISSIONER OF EDUCATION

Student F. DOE,  
By her parent,

*Petitioner*

v.

EAST PROVIDENCE SCHOOL  
DISTRICT,

*Respondent*

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RIDE No. 22-005K

**DECISION AND ORDER**

**Held:** Petitioner's appeal of a school committee's decision to disenroll her daughter from the school district's state-funded, full-day pre-kindergarten program was denied by the Commissioner since: (1) the student failed to comply with applicable attendance policies by accumulating more than twenty (20) unexcused absences during the school year; and (2) the student's split custody arrangement did not qualify for an exception under the attendance policies.

Date: March 1, 2022

## **I. INTRODUCTION**

On or about February 3, 2022, Petitioner, Student F. Doe (“Doe”), by her mother, Ms. Doe, submitted an electronic correspondence to the Commissioner of the Department of Elementary and Secondary Education (“RIDE”) appealing from a February 1, 2022 decision of the East Providence School Committee to disenroll Doe from the East Providence School District (“East Providence”) full day pre-kindergarten program due to Doe’s consistent failure to attend the program for the mandatory five (5) days per week.

## **II. JURISDICTION AND STANDARD OF REVIEW**

The Commissioner has jurisdiction over this appeal pursuant to R.I. Gen. Laws § 16-39-2, and as the Commissioner has noted on many occasions, the applicable standard of review is *de novo*. See *Alba v. Cranston School Committee*, 90 A.3d 174, 185-85 (R.I. 2014) (citing *Slattery v. School Committee of Cranston*, 116 R.I. 252, 262 (1976)).

## **III. MATERIAL FACTS**

The material facts are not in dispute, and the following recitation was deduced from the testimony and documentary evidence submitted at the hearing before the undersigned Hearing Officer on February 18, 2022, which, by stipulation, was conducted virtually via Zoom.

1. Doe is a pre-kindergarten student enrolled in the full-day East Providence Pre-Kindergarten Program (“Program”) for the 2021-2022 school year.
2. The Program is part of a state grant-funded pre-kindergarten program and its continued operation is contingent on compliance with regulations, policies, and procedures that are promulgated and enforced by RIDE (collectively, the “RIDE Policies”).
3. Doe’s parents are divorced, with Doe’s mother residing at all relevant times in East Providence, Rhode Island and Doe’s father residing at all relevant times in Newton, Massachusetts.

4. Pursuant to an agreement executed by both Mr. and Ms. Doe (the “Custody Order”), Doe was to spend equal visitation with both parents during the week. (Resp’t Ex. 6.)
5. The Custody Order was executed by Mr. and Ms. Doe prior to Doe’s enrollment in the Program, which occurred in or around August 2021.
6. On or around August 24, 2021, East Providence hosted an orientation for parents who chose to enroll their children in the Program, which Ms. Doe attended. During the orientation, Karen Rebello, Principal, shared a presentation that, in part, discussed the RIDE Policies.
7. The RIDE Policies contain a “strictly enforced” attendance policy that is included in the East Providence School Department Pre-K Program Parent Handbook (“Handbook”), which states that:

All children are expected to be in attendance each day unless they are ill, a family emergency arises, or there is a religious holiday.

...

If a child is absent from the program for a total of 20 unexcused absences, they will lose their placement in the program.

(Resp’t Ex. 5, p.8.)

8. Each parent was provided with a copy of the Handbook, including Ms. Doe.
9. On September 2, 2021, upon acceptance of enrollment in the Program, Ms. Doe signed the requisite East Providence Pre-Kindergarten Contract of Enrollment (“Contract”), thereby confirming her understanding that the following terms and conditions applied to the Program:
  1. EP PreK will provide a quality program that operates Monday through Friday, 6 hours each day and 180 days a school year free of charge for families.
  2. Families will ensure their child attends school for the full 6-hour day, 5 days a week, 180-day school year unless there is an illness or otherwise excused absence.

3. If a family is unable to abide by the attendance policy, the child is at risk of becoming dis-enrolled. EP PreK Family handbook has details of attendance policy.

(Resp't Ex. 4.)

10. Ms. Doe testified that, at the time of signing the Contract, she understood and intended for Doe to attend the Program five (5) days per week.

11. On September 13, 2021, Ms. Doe sent an email to Doe's teacher stating:

Our family is navigating some medical obstacles, and [Doe's] pediatrician recommends her attending school 2 days a week at this point.

I deeply wish for her to attend Thursdays and Fridays, and all 5 days if we could.

I have a letter from the doctor's office, and am happy to explain more if it helps.

(Resp't Ex. 11, p.1.)

12. In a separate email sent to Doe's teacher this same day, Ms. Doe provided a note from Doe's pediatrician dated August 25, 2021, which read: "[Doe] was seen in our Pediatrics Department today. For personal reasons, that I fully support [sic] [Doe] will be attending this pre-school two days a week." (Resp't Ex. 1; Ex. 11, p.1.)

13. Ms. Rebello was made aware of the email explaining Doe's circumstances but was not forwarded a copy of the pediatrician note at this time.

14. Ms. Doe testified that she subsequently did not hear from any East Providence staff that Doe could not stay in the Program due to her inability to attend the Program five (5) days per week.

15. Ms. Rebello testified that it is her usual policy to perform an attendance check for all students on or around November 1 of each school year. For students who have over ten (10) absences

at that time, she sends a mandatory attendance letter to the student's parents to determine whether East Providence can support in improving the student's attendance.

16. On or around October 20, 2021, during this attendance check, Ms. Rebello became aware that Doe had over fifteen (15) absences. Ms. Rebello testified that she also first became aware of the August 25, 2021 pediatrician note at this time.

17. On October 27, 2021, Ms. Rebello sent a letter to Ms. Doe indicating that Doe "has been chronically absent from school." (Resp't Ex. 2.) As of the date of the letter, Doe had been absent on nineteen (19) occasions. *Id.* In the letter, Ms. Rebello invited Ms. Doe to call her to "resolve any problems that may be causing your child to miss school." *Id.* A handwritten note at the end of the letter also states that Ms. Rebello had "tried repeatedly to reach [Ms. Doe] by phone over the past few weeks about this" without success. *Id.*

18. On October 28, 2021, after receiving the attendance letter, Ms. Doe sent an email to Ms. Rebello stating that she "provided [Ms. Rebello] with a medical note from [Doe's] doctor" and inquiring as to whether she needed to provide "more details about our . . . families [sic] health situation." (See Resp't Ex. 11, p.2.)

19. Ms. Rebello responded via email this same day, stating:

I was made aware of the circumstances, however the state rule is very strict on attendance as being present is the most important thing. When accepting a seat your child to be able to attend every day, all day unless they are ill or have some type of temporary medical or family emergency. The inability to attend 3 days a week is a substantial amount of lost classroom time. Unfortunately, that is the policy we have to follow. I hope she will be able to attend daily moving forward and resolve the issue.

*Id.*

20. Ms. Rebello testified to subsequently contacting Lisa Nugent, Coordinator for Early Learning at RIDE, to discuss Doe's circumstances and providing Ms. Nugent with a copy of the

August 25, 2021 pediatrician note, which Ms. Rebello further testified is her usual practice whenever there is a concern about a student's attendance.

21. Soon thereafter, Ms. Nugent contacted Ms. Rebello requesting additional medical documentation and a more detailed explanation from Ms. Doe as to precisely why Doe was unable to attend the Program five (5) days per week.
22. On November 30, 2021, in response to multiple requests from Ms. Rebello for additional documentation, made on November 5, 2021 and November 10, 2021, Ms. Doe submitted via email a subsequent note from Doe's pediatrician dated November 19, 2021, which read:

Due to agreement of parents in regards to custody schedule [Doe] spends specific days during the week with mom and dad separately. This decision was made for her to have equal parenting time is in the best interest of her health and development at this age. For personal reasons, that I fully support [Doe] will be attending pre-school in 2 separate locations. Please make all efforts to accommodate [Doe] during this pre-school year in regards to these circumstances.

(Resp't Ex. 3; Ex. 11, pp.4, 7-8.)

23. Ms. Rebello testified to providing this second pediatrician note to Ms. Nugent, who responded by stating that she would work with RIDE staff to make a determination as to how East Providence should proceed. (See Resp't Ex. 11, pp.10-11.)
24. On December 10, 2021, Ms. Nugent contacted Ms. Rebello via phone and explained that the RIDE Pre-K Team had determined that Doe did not qualify for an exception to the attendance policy and therefore authorized Doe's disenrollment from the Program.
25. In accordance with this directive, Ms. Rebello sent an email to Ms. Doe this same day, stating:

I've shared your most recent email regarding your daughter's placement in the East Providence State PreK [sic] Program at Martin Middle School. After going through the review process at

the RI Department of Education, it has been determined that the attendance component of the State PreK requires a student to participate five days a week in the program of selection.

If you are able to attend EP PreK five days a week moving forward, just let us know. If not, we will hold her spot until December break which begins on 12/23/2021 and seek to fill the spot upon return the week of 1/3/22.

(Resp't Ex. 11, p.12.)

26. Ms. Doe appealed Ms. Rebello's determination to Superintendent Kathryn Crowley, who sustained the decision to disenroll Doe from the Program in a letter dated January 18, 2022.

(See Resp't Ex. 10.)

27. Ms. Doe then appealed Superintendent Crowley's decision to the East Providence School Committee. After a hearing on February 1, 2022, the East Providence School Committee voted unanimously to "sustain the Superintendent's decision and uphold RIDE regulations and determination that [Doe] be disenrolled from the East Providence School District's full day pre-k program effective February 7, 2022." (Resp't Ex. 9.)

#### **IV. POSITIONS OF THE PARTIES**

##### **1. Petitioner**

While conceding that the RIDE Policies require students to attend the Program for five (5) days per week, Petitioner argues that Doe's unique family situation, wherein her parents share equal physical custody while residing in separate states, as well as East Providence's delay in objecting to her attendance for only two (2) days a week, despite having been made aware of this fact at the beginning of the school year, qualifies her for an exception to the attendance policies.

## 2. East Providence

East Providence maintains that it is required to comply with the RIDE Policies in order to maintain its eligibility to receive grant funding and operate the Program and, therefore, has no authority to disregard RIDE's decision, made pursuant to its exclusive authority, to disenroll Doe for failure to comply with the attendance policy. In addition, East Providence suggests that creating such an exception for Doe would be unfair to families in similar situations as Doe who may have wished to attend the Program but who never applied to the Program because they were unaware that it was possible to attend the Program for less than five (5) days per week.

## V. DECISION

### 1. The RIDE Policies are controlling.

Pre-kindergarten is not mandatory in the state of Rhode Island and, given the absence of any other statutes or regulations relating to a child's attendance in a pre-kindergarten program, it is clear that the RIDE Policies are the controlling authority. In relevant part, the RIDE Policies provide:

Enrolled children are required to regularly attend the full school day for the RI Pre-K program in order to maintain their enrollment seat. . . . These policies and procedures should be in place to inform families of the importance of regular attendance, to support families in maintaining their child's regular attendance, and to inform families of the programmatic consequence of excessive unexcused absences. . . . **State policy delineates that if the child continues to miss school for unexcused reasons, and has been out for 20 or more days, the child may lose his/her RI Pre-K seat and another child's family may be offered the seat.**

(See Resp't Ex. 8 at p.13.) (emphasis added). Excused and unexcused absences are defined as:

Excused absences include, but are not limited to:

- Personal illness (Excused with a doctor's note, or if the program excludes the child due to illness in accordance with their program policies)



- Quarantine under the direction of a health officer or the program
- Personal medical, dental, optometric or chiropractic appointment
- Funeral services for a member of the immediate family
- Observance of a religious holiday or ceremony
- Documentation of required services (court, visitation, special education interventions etc.)

Unexcused Absences include but are not limited to:

- Family vacation
- Lack of transportation
- Weather barriers (Icy sidewalks, rain etc.)
- Family decision to remain home (i.e., oversleeping, new baby, visiting relatives etc.)
- Parent illness

*Id.* at p.14.

While the RIDE Policies require program staff to “identify solutions/resources to ensure the child is present each day” and “continuously offer to support the family in identifying resources that support the regular and timely attendance of the child,” the RIDE Policies also provide that:

If program staff believes that a specific family and child situation creates an exception to the RI Pre-K policy, the Program Director or Education Coordinator will contact RIDE representatives to speak directly about the situation. Exceptions to this state policy are made individually based on the family and child situation.

*Id.* at p.13. Moreover, the RIDE Policies make clear that “[n]o child shall be dis-enrolled without authorization from the RIDE RI Pre-K Team,” which is led and coordinated by Ms. Nugent. *See id.* at p.14.

- 1. Doe was properly disenrolled from the Program because Doe accumulated over twenty (20) unexcused absences and the RIDE Pre-K Team authorized her disenrollment after determining that she did not qualify for an exception to the RIDE Policies.**

The RIDE Policies expressly mandate “that if the child continues to miss school for unexcused reasons, and has been out for 20 or more days, the child may lose his/her RI Pre-K seat and another child’s family may be offered the seat.” *See id.* at p.13. Thus, once a child has more than twenty (20) unexcused absences, it is up to the pre-kindergarten program coordinator, in this case Ms. Rebello, to contact the RIDE Pre-K Team and await a determination as to whether “a specific family and child situation creates an exception to” the RIDE Policies, which is made in the RIDE Pre-K Team’s sole discretion. *See id.*

Here, it is undisputed that Doe accumulated over twenty (20) unexcused absences after consistently attending the Program on a part-time basis for only two (2) out of the requisite five (5) days per week from the start of school in September 2021 through the date of her disenrollment in December 2021. In addition, Ms. Doe’s testimony reveals that, prior to enrolling Doe in the Program, she was aware that Doe would likely not be able to comply with the full-time attendance schedule. Immediately after learning of the attendance requirements at the orientation on August 24, 2021, Ms. Doe obtained a note from Doe’s pediatrician attempting to excuse her daughter’s full-time attendance the following day, on August 25, 2021 and, after learning that Doe was in jeopardy of losing her seat in the Program due to her chronic absenteeism in late October 2021, Ms. Doe obtained a second note from Doe’s pediatrician dated November 19, 2021 also attempting to excuse Doe’s full-time attendance.

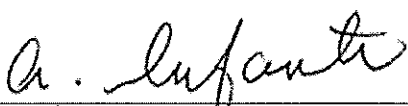
While these two pediatrician notes are in a literal sense “medical” documentation, they do not excuse Doe’s absences because neither note speaks to Doe’s absences being the result of a “personal illness.” *See id.* at p.14. Rather, the actual reasoning for Doe’s repeated absences, as

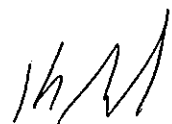
demonstrated by the testimony and as stated in both pediatrician notes, was due to the split custody arrangement entered into by Mr. and Ms. Doe prior to Doe's enrollment in the Program. However, the RIDE Pre-K Team reasonably determined that the RIDE Policies did not permit this voluntary Custody Order, standing alone, to automatically excuse or except Doe from complying with the attendance requirements and thereby allow her to attend a full-time pre-kindergarten program on a part-time basis. Once this determination was made, Ms. Rebello properly followed the RIDE Pre-K Team's directive to disenroll Doe from the Program as she had no authority under the RIDE Policies to question or otherwise disregard the RIDE Pre-K Team's final decision.

Notably, while given the opportunity to question Ms. Nugent as to the reasoning behind her ultimate decision to disenroll Doe and/or why she determined that Doe did not qualify for an exception, the parties chose not to call her as a witness at the hearing and introduced no evidence to suggest that the decision of the RIDE Pre-K Team was, for some reason, unfair. Thus, in the absence of any such evidence, it is not the role of the Commissioner to question or overturn a final determination to disenroll a student from a pre-kindergarten program that was made by the RIDE Pre-K Team pursuant to its express authority under the RIDE Policies.

#### **IV. ORDER**

For all the above reasons, Petitioner's Appeal is hereby denied and dismissed.

  
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ANGÉLICA INFANTE-GREEN,  
Commissioner

  
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KAELYN R. PHELPS, ESQ.,  
as Hearing Officer for the Commissioner

Date: March 1, 2022